

Docket No.: R0998-238L
Applicant(s): Joseph P. Bigus
Serial No.: 09/238,821
Filed: January 28, 1999

The U.S. Patent Office acknowledges and has
stamped hereon the date of receipt of the items
checked below which were mailed on
August 8, 2002

- ☐ Affidavit
- ☐ Amendment
- ☐ Patent Application Papers - Transmittal
- ☐ Spec. & Abstract: pages, incl. claims
- ☐ Declaration
- ☐ Drawings: sheets
- ☐ Assignment; Record Cover Sheet (2 copies)
- ☐ Info. Discl. Stmt.

- ☐ Preliminary
- ☒ Notice of Appeal
- ☐ Appeal Brief
- ☐ Petition
- ☐ Request for Extension of Time
- ☐ Response
- ☐
- ☐
- ☐

If via Express Mail

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: Joseph P. Bigus

Serial No.: 09/238,821

Filed: January 28, 1999

For: VEHICLE-BASED ORDER ENTRY AND PROCESSING
MECHANISM

Group Art Unit: 3624

Confirmation No.: 5818

NOTICE OF APPEAL

Assistant Commissioner for Patents
Washington, DC 20231

Sir:

Applicant hereby appeals to the Board of Appeals from the decision dated May 8, 2002, of the Primary Examiner finally rejecting claims 1-46 and 48-52.

The item(s) checked below are appropriate:

1. ☐ An extension of time to respond to the final rejection was granted on _____ for _____ month(s).
2. ☐ A timely response to the final rejection has been filed.
3. ☒ This Notice of Appeal constitutes a timely response to the final rejection.

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4. ☒ The fee of \$320.00 is:
- ☐ Enclosed.
- ☐ Not required. (Fee paid in prior appeal.)
- ☒ Charged to Deposit Account No. 09-0465. A duplicate copy of this sheet is enclosed.

Date: August 8, 2002

CERTIFICATE OF MAILING UNDER 37 CFR 1.8(a)

I hereby certify that the enclosed or attached correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to the Assistant Commissioner for Patents, Washington, D.C. 20231, on

August 8, 2002

Date of Deposit

Debra A. Peterson
Debra A. Peterson

Respectfully submitted,

By Steven W. Roth
Steven W. Roth
Registration No.: 34,712

From:

IBM Corporation
Intellectual Property Law
Dept. 917, Bldg. 006-1
3605 Highway 52 North
Rochester, MN 55901

Telephone: (507) 253-1600
Fax: (507) 253-2382

Docket No.: RO998-238L
Serial No.: 09/238,821



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
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Washington, D.C. 20231
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/238,821	01/28/1999	JOSEPH PHILLIP BIGUS	R0998-238	5818

7590

05/08/2002

STEVEN W ROTH
IBM CORPORATION
DEPARTMENT 917
3605 HIGHWAY 52 NORTH
ROCHESTER, MN 559017829

EXAMINER

KAZIMI, HANI M

ART UNIT

PAPER NUMBER

3624

DATE MAILED: 05/08/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/238,821

Applicant(s)

BIGUS, JOSEPH PHILLIP

Examiner

Hani Kazimi

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 February 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-46 and 48-52 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-46 and 48-52 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 28 January 1999 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

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DETAILED ACTION

1. This communication is in response to the Continued Prosecution Application (CPA) request transmittal and the preliminary amendment filed on February 27, 2002.

Status of Claims

2. Of the original claim 1, claim, has been amended and claims 2-52 have been added in the preliminary amendment filed on May 24, 1999. In the amendment filed on September 8, 2000, claim 47 has been canceled, and claims 1, 11, 20, 24, 34, 43, 46, 48, 49, and 50 have been amended. In the amendment filed on May 23, 2001, claims 1, 11, 20, 24, 34, 43, 46, and 50 have been amended. In the amendment filed on February 27, 2002, claims 1, 11, 20, 24, 34, 43, 46, 50, and 52 have been amended. Therefore, claims 1-46, and 48-52 are under prosecution in this application.

Summary of Office Action

3. Applicants' amendment filed on February 27, 2002 have been fully considered, the pending claims 1-46, and 48-52 are rejected as being unpatentable over the art cited below, and Applicants' request for allowance is respectfully denied.

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Response to Applicant's Amendment

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. The factual inquiries set forth in *Graham v. John Deere Co.*, 148 USPQ 459, that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or unobviousness.

6. Claims 1-4, 6-13, 15-22, 24-27, 29-36, 38-46, and 48-52 are rejected under 35 U.S.C. 103(a) as being unpatentable over Matsuda et al. US Pat. No. 5,794,116.

Claims 1-4, 6-13, 15-22, 24-27, 29-36, 38-46, and 48-52, Matsuda teaches a method and a corresponding system as discussed in paragraphs 5-8 of paper No. 12. Further:

Matsuda teaches the steps of transmitting information about available items as a first wireless transmission, and retransmitting said information about said available items as a second

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wireless transmission (column 3, lines 1-7).

Matsuda fails to teach that the information not being received as a result of a request from said customer device.

Official Notice is taken that transmitting information without a request from a receiving device is old and well known in the art, for example pushdowns in client-server systems are well known, a server is able to pushdown information and data to a client without transmitting a request signal for the information from the client.

It would have been obvious to one of ordinary skilled in the art at the time the Applicant's invention was made to modify the teachings of Matsuda to include that the information about available items not being received as a result of a request from said customer device because, Matsuda performs the step of continuously transmitting a signal in a wireless communications network to a wireless video terminal, one of ordinary skilled in the art would be motivated to do so, because it provides convenience to the user by eliminating the requesting step by the user, and it greatly improves the marketing aspects of the system by advertising a available items.

7. Claims 5, 14, 23, 28, and 37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Matsuda et al. US Pat. No. 5,794,116 in view of Camaisa et al. US Pat. No. 5,845,263 as discussed in paragraph 9 of paper No. 12.

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Conclusion

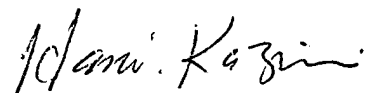
8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hani Kazimi whose telephone number is (703) 305-1061. The examiner can normally be reached Monday-Friday from 8:30 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vincent Millin can be reached at (703) 308-1065.

The fax number for Formal or Official faxes and Draft or Informal faxes to Technology Center 2100 or this Art Unit is (703) 746-7238 or 7239.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 305-3900.

Respectfully Submitted

A handwritten signature in cursive script, appearing to read 'Hani Kazimi'.

Hani.Kazimi

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May 2, 2002